IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2007

CORAM:

THE HONOURABLE MRS.JUSTICE PRABHA SRIDEVAN

Writ Petition No.48731 of 2006

Shri Someshwara Spun Pvt. Ltd.,
SF No.23/3D, Bogi Gounder,
Dasaipatti Village, Kural Kuttai Road,
Udumalpet, Coimbatore-642 154,
rep. by Authorised Signatory,
Shri.T.S.Santhanam .. Petitioner

Vs.

1. Tamil Nadu Electricity Board,
   rep. by its Chairman,
   800, Anna Salai,
   Chennai-600 002.

2. Superintendent Engineer,
   Tamil Nadu Electricity Board,
   Udumalpet Electricity Distribution Circle,
   Udumalpet. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to consider the representation of the petitioner dated 27.11.2006 for grant of 500 KVA H.T. Service Connection to their unit at S.F. No.23/3D, Bogi Gounden Dasaripatti Village, Kural Kuttai Road, Udumalpet-642 154, Coimbatore without insisting on clearance of arrears due and payable by the erstwhile owner M/s.Sri Murugan Mills Pvt Ltd, in the light of the law laid down in Isha Marbles Vs. Bihar State Electricity Board and another reported in 1995 (2) SCC 648.

For petitioner : Mr.S.V.Jayaraman, Sr.Counsel for
Mr.R.Chandrasudan
For respondents: Mr.J.Ravindran

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O R D E R

The petitioner purchased the assets from M/s.Sri Murugan Mills Ltd, in respect of which, winding up proceedings were initiated, upon the reference and recommendation from the Board for Industrial and Financial Reconstruction (BIFR). This Court, exercising its jurisdiction under the Companies Act, had also appointed the Official Liquidator as Provisional Liquidator to M/s.Sri Murugan Mills Ltd. for the purpose of liquidating the assets of the company in settling the creditors. The factory premises were valued. One of the Directors of the sister concern of the petitioner came up as the successful bidder, when the public auction was conducted in respect of the factory premises and this Court in C.A. No.1459 of 2005 in C.P.No.230 of 2001, declared him as the successful bidder. The total sale consideration was fixed at Rs.1,94,00,000/-. The entire payment, as directed by this Court, was paid to the Official Liquidator and the possession was handed over to the petitioner, upon the bidder nominating the petitioner as the transferee of the factory premises. When the petitioner took possession of the factory premises, he came to know that H.T. Service Connection was disconnected by the second respondent for non-payment of the consumption charges by the erstwhile owner, namely, M/s.Sri Murugan Mills Ltd. The petitioner, therefore, made an application to the first respondent on 27.11.2006 for grant of a fresh H.T. Service Connection for which the petitioner received a copy of the letter dated 30.11.2006 sent by the second respondent to the Official Liquidator stating that until the arrears due to the Electricity Board are cleared by the Official Liquidator, the service connection cannot be granted. Aggrieved by this, the present writ petition is filed.

2. Notice was ordered to the respondents on 15.12.2006. Learned counsel for the Electricity Board submitted that he had received oral instructions that, after paying the amounts to the various creditors, out of the amount realised by the sale of the factory premises, the dues to the Electricity Board would also be paid in accordance with the amount remaining in balance or in accordance with the share.

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3. In an identical situation, the Supreme Court in the case of Isha Marbles Vs. Bihar State Electricity Board and Another, reported in (1995) 2 SCC 648, held as follows:

> "56. From the above it is clear that the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. Where that premises comes to be owned or occupied by the auction-

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purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant."

Following the above, the Supreme Court in the case of Ahmedabad Electricity Co. Ltd. Vs.Gujarat Inns Pvt Ltd and Others, reported in (2004) 3 SCC 587, held as follows:

"3. In our opinion, the present two cases are cases of fresh connection. The learned counsel for the respondents (auction-purchasers) have stated that they have taken fresh connections and they have no objection if their connections are treated as fresh connections given on the dates on which the supply of electricity was restored to the premises. We are clearly of the opinion that in case of a fresh connection though the premises are the same, the auction-purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supply to the premises in the absence of there being a specific statutory provision in that regard. Though we find some merit in the submission of the learned counsel for the appellant calling for reconsideration of the wide propositions of law laid down in Isha Marbles case we think the present one is not a case for such exercise. We leave the plea open for consideration in an appropriate case."

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4. In view of the law laid down by the Supreme Court as above, the writ petition is allowed and the respondents shall consider the application of the petitioner for grant of service connection, without insisting on the clearance of arrears by the erstwhile owner. No costs. Consequently, M.P.No.1 of 2006 is closed.

Km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman,
   Tamil Nadu Electricity Board,
   800, Anna Salai,
   Chennai-600 002.

2. The Superintendent Engineer,
   Tamil Nadu Electricity Board,
   Udumalpet Electricity Distribution Circle,
   Udumalpet.

+ one cc to Mr. R. Chandrasudan, Advocate sr no. 3256
+ one cc to Mr. J. Ravindran, Advocate sr no. 3747

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